

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KEYBANK NATIONAL ASSOCIATION, Plaintiff
--

v.

Civil No. 00-41-P-C

J. GARY HAMILTON and BEVERLY E. HAMILTON, Defendants
--

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Presently before the Court is Plaintiff's unopposed Motion for Summary Judgment ("the Motion" or "Motion") (Docket No. 6). This action arises out of a failed loan from Plaintiff to Kevlaur Industries, Inc. and BEVCORP, two Maine corporations. Plaintiff alleges that Defendants made personal guarantees for the loan, and now that the loan is in default, Plaintiff seeks summary judgment against Defendants. Plaintiff claims the jurisdiction of this Court is properly established by 28 U.S.C. § 1332, because the matter in controversy exceeds \$75,000 and the parties are citizens of different states. Further, Plaintiff contends that venue is proper in this Court pursuant to the express terms of the guarantee agreement signed by Defendants. Each Defendant was served, in hand, with a copy of the Complaint, but neither Defendant has answered. Accordingly, a default has been entered against each Defendant (Docket Nos. 2 and 4). Similarly, neither Defendant has responded to Plaintiff's instant Motion.

In March of 1993, Kevlaur Industries, Inc. and BEVCORP (collectively “Borrowers”) executed and delivered a term note to KeyBank in the amount of \$2,000,000. Plaintiff’s Statement of Material Facts (“PSMF”) (Docket No. 7) ¶ 4. The note was subsequently assigned to Key Corporate Capital Inc., and later reassigned to Plaintiff, KeyBank. PSMF ¶ 5. The note was governed by a loan agreement between Borrowers and Plaintiff and, like the note, the loan agreement was assigned to Key Corporate Capital Inc. and later reassigned to Plaintiff. PSMF ¶ 6. The note and loan agreement were amended by a forbearance agreement on December 22, 1998, which was subsequently amended twice. PSMF ¶ 7. Currently, Borrowers are in default of the note, loan agreement, and forbearance agreement as a result of their failure to pay the note when due. PSMF ¶ 8. As of April 12, 2000, Borrowers owed Plaintiff \$247,717.38 in principal, \$9,113.36 in interest, and \$284.49 in late charges. PSMF ¶ 9.

Contemporaneously with the Borrowers’ execution of the note and loan agreement, each Defendant executed and delivered to Plaintiff an unconditional personal guarantee of the loan. PSMF ¶ 10. The guarantees were initially assigned to Key Corporate Capital Inc. and then reassigned to Plaintiff, KeyBank. PSMF ¶ 10. As a result of the guarantees, each Defendant is jointly and severally liable for all amounts owed to Plaintiff by the Borrowers. PSMF ¶ 11. Defendants have not paid to Plaintiff the amounts currently owed to Plaintiff by the Borrowers. PSMF ¶ 12. The guarantee requires Defendants to pay reasonable attorney’s fees associated with the enforcement of the guarantee. PSMF ¶ 12, Exhibits A, B.

Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. *See Fed. R. Civ. P. 56(c)*. Once the moving party has come forward identifying those portions of “the pleadings, depositions, answers to interrogatories, and admissions on file, together with

affidavits, if any” which “it believes demonstrate the absence of a genuine issue of material fact,” the adverse party may avoid summary judgment only by providing properly supported evidence of disputed material facts that would require trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2551-52 (1986). However, the failure of Defendants to file a response to Plaintiff’s Motion does not entitle Plaintiff to summary judgment as a matter of course. “Rather, before granting an unopposed summary judgment motion, the court must inquire whether the moving party has met its burden to demonstrate undisputed facts entitling it to summary judgment as a matter of law.” *Lopez v. Corporation Azucarera de Puerto Rico*, 938 F.2d 1510, 1517 (1st Cir. 1991) (internal quotation omitted).

From the facts set forth in Plaintiff’s Statement of Material Facts, the Court is satisfied that its is established without any genuine issue of material fact that: (1) Defendants have a contractual duty to personally guarantee the loan of the Borrowers, (2) the Borrowers are in default on the note, such that, (3) Plaintiff is entitled to enforce the personal guarantees against Defendants, and, (4) because Defendants have not paid Plaintiff the amounts outstanding on the loan, Defendants have breached their contractual duty to guarantee the loan. Additionally, per the terms of the guarantees, Plaintiff is entitled, any genuine issue of material fact being absent, to recover reasonable attorney’s fees associated with this action. Therefore, Plaintiff is entitled to summary judgment as a matter of law.

Accordingly, the Court **ORDERS** that Plaintiff’s Motion for Summary be, and it is hereby, **GRANTED**. It is further **ORDERED** that no later than ten (10) days following the docketing of this **ORDER**, Plaintiff shall submit an affidavit to the Court which includes current calculations of principal, interest, late charges, and attorney’s fees so that final judgment may be entered.

GENE CARTER
District Judge

Dated at Portland, Maine this 5th day of July, 2000.

KEYBANK NATIONAL ASSOCIATION
plaintiff

LEONARD W. LANGER
[COR LD NTC]
LAWRENCE A. CLOUGH, ESQ.
[COR]
TOMPKINS, CLOUGH, HIRSHON &
LANGER
THREE CANAL PLAZA
P.O. BOX 15060
PORTLAND, ME 04112-5060
207-874-6700

v.

J GARY HAMILTON
default defendant

BEVERLY E HAMILTON
default defendant